

) Civil Action No. 2: 13-cv-1360  
)  
) United States District Court Judge  
) Arthur J. Schwab  
)  
) United States Magistrate Judge  
) Cynthia Reed Eddy  
)  
)

# MEMORANDUM ORDER

This case was commenced on September 17, 2013, and was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules for Magistrate Judges.

Defendants filed a motion to dismiss arguing that the Complaint should be dismissed for failure to state a claim as Defendants’ alleged “failures to adhere to the policies and procedures established by the DOC fail to rise to the level of a Constitution violation.” (ECF No. 68.)

On September 5, 2014, Magistrate Judge Eddy filed a Report and Recommendation (ECF No. 79) recommending that Defendants' motion to dismiss be granted on the grounds that Plaintiff's claims failed to state a claim and dismissal be with prejudice as it appears that granting Plaintiff leave to amend would be futile. Plaintiff was served with the Report and Recommendation at his listed address and was advised that he had until September 22, 2014, to file written objections to the Report and Recommendation. On September 19, 2014, Plaintiff filed a request for a thirty-day extension of time in which to file objections. (ECF No. 80.) His request was granted in part and denied in part, and Plaintiff was allowed an extension until

October 15, 2014 to file objections. (Text Order of 9/22/2014.) To date, no objections have been filed nor have any additional requests for an extension to file objections been filed.<sup>1</sup>

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 20<sup>th</sup> day of October, 2014:

1. Defendants' motion to dismiss (ECF No. 68) is **GRANTED** for failure to state a claim; and
2. **IT IS FURTHER ORDERED** that the Report and Recommendation (ECF No. 79) dated September 5, 2014, is **ADOPTED** as the Opinion of the Court.

**IT IS FURTHER ORDERED** that the Clerk of Court mark this case **CLOSED**.

**AND IT IS FURTHER ORDERED** that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

SO ORDERED this 20<sup>th</sup> day of October, 2014:

  
Arthur J. Schwab  
United States District Judge

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<sup>1</sup> The Court acknowledges that presently pending before the United States Court of Appeals for the Third Circuit at Case No. 14-1606 is Plaintiff's appeal of the Magistrate Judge's ruling on Plaintiff's Motion for Reconsideration, which asked for reconsideration of the Court's denial of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction. *See* Notice of Appeal, March 11, 2014 (ECF No. 50). However, this Court has not been divested of jurisdiction because only final orders of the district courts may be reviewed. 28 U.S.C. § 1291. Absent consent of the parties to proceed before a Magistrate Judge, appeal of an order issued by a Magistrate Judge is to a District Judge. 28 U.S.C. § 636(b)(1) & (c)(1). Plaintiff has not consented to proceed before a Magistrate Judge. *See* ECF No. 72.

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